

REMARKS

Claims 57-67 are pending, with claim 57 being independent. Applicants have amended claim 57 and added new claim 67.

Claims 57-62 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Anderson (5,571,216).

Anderson describes joining or welding collagen-containing tissue by bringing the free ends of the collagen fibrils at the surface of two disconnected tissues into contact. See, e.g., Anderson, col. 3, lines 62-67 and FIGS. 2 and 3. Thus, rather than applying RF thermal energy to tissue naturally joining portions of a body, as now claimed in claim 57, the tissue to which RF thermal energy is applied in Anderson is disconnected.

Therefore, for at least the reasons discussed above, claims 57-62 are patentable over Anderson.

Claims 57 and 61-66 stand rejected under 35 U.S.C. § 103 as being unpatentable over Sand (4,976,709) in view of Anderson.

Anderson describes the use of laser or RF energy to weld tissue, but does not state that laser and RF energy are "equivalent". Sand describes the use of laser energy to shrink collagen tissue. Neither reference describes or suggests the use of RF energy to shrink collagen tissue. The Examiner is apparently taking the position, similar to the position taken in the previous rejection of the claims over Sand in view of Makower, that Anderson's description of the use of laser energy or RF energy to weld tissue suggests to one of ordinary skill in the art that RF energy can be used in place of laser energy to shrink collagen tissue, as described by Sand. The Examiner is relying on hindsight. There is no description or suggestion in either reference that RF energy can replace laser energy to shrink collagen tissue.

For at least this reason, claims 57 and 61-66 are patentable over Sand in view of Anderson.

Applicants traverse the Examiner's assertion that to employ RF energy in the method of Sand ('709) "is not critical."

Applicants further traverse the Examiner's assertion that the technique to reach the internal tissues in the method of Sand ('709) "is not critical," and submit that any lack of discussion in Sand of avoiding certain structures would not provide support for invalidating a claim to those structures

Applicants do not acquiesce to the characterizations of the art. For brevity and to advance prosecution, however, Applicants may have not addressed all characterizations of the art, but reserve the right to do so in further prosecution of this or a subsequent application.

The absence of an explicit response by the applicant to any of the examiner's positions does not constitute a concession of the examiner's positions. The fact that applicant's comments have focused on particular arguments does not constitute a concession that there are not other good arguments for patentability of the claims. All of the dependent claims are patentable for at least the reasons given with respect to the claims on which they depend.

Applicant asks that all claims be allowed.

Please apply any charges or credits to deposit account 06-1050.

Respectfully submitted,

Date: _____

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